

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:08cv274**

<b>PASQUALE RICCI and wife,</b>	)
<b>KATHY RICCI,</b>	)
	)
<b>Plaintiffs,</b>	)
	)
<hr/> <b>Vs.</b>	)
	)
<b>SUPERIOR MOVING &amp;</b>	)
<b>STORAGE, INC.,</b>	)
	)
<b>Defendant.</b>	)
	)

**ORDER**

**THIS MATTER** is before the court on defendant's Motion to Dismiss and plaintiff Kathryn Ricci's Motion to Dismiss Without Prejudice. In her motion, Ms. Ricci asks this court to dismiss her action without prejudice and to allow her one year within which to refile this action due to health concerns. Mr. Ricci has not signed the motion.

Ms. Ricci is advised that this court has no authority to enlarge any deadline for the filing of a civil action, known as a "statute of limitations" deadline. It is up to plaintiff to determine when a statute of limitation is to run. Further, if plaintiff desires to take a voluntary dismissal of her action without prejudice, she may do so under Rule 41(a)(1)(A), Federal Rules of Civil Procedure, at any time prior to defendant filing an answer or moving for summary judgment by filing a "notice of dismissal without prejudice." Inasmuch as there are two plaintiffs in this matter, both plaintiffs would need to sign the notice for the entire case to be voluntarily dismissed.

Finally, plaintiff is advised that if she has previously dismissed this action, a second dismissal would operate as an adjudication on the merits. Fed.R.Civ.P. 41(a)(1)(B). Plaintiffs are again advised that they need the assistance of counsel in this matter inasmuch as important legal rights are at stake.

The court will deny plaintiff's Motion to Dismiss without prejudice as it seeks relief that this court cannot grant as a matter of law. Plaintiffs will be allowed until September 5, 2008, to either respond to defendant's Motion to Dismiss or file a notice of voluntary dismissal signed by both plaintiffs. Plaintiffs are advised that such a dismissal may operate as an adjudication on the merits if these claims were previously dismissed or if the statute of limitations has already run.

## ORDER

**IT IS, THEREFORE, ORDERED** that plaintiff Kathryn Ricci's Motion to Dismiss (#10) is **DENIED** without prejudice and plaintiffs are allowed up to and inclusive of September 5, 2008, to so respond to defendant's Motion to Dismiss or file a Notice of Voluntary Dismissal Without Prejudice signed by both plaintiffs.

Signed: August 27, 2008

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

